

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97-29]

David M. Rose, MD.; Revocation of Registration

On May 15, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David M. Rose, M.D. (Respondent), of Massachusetts, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BR2726365, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the Commonwealth of Massachusetts.

The Order to Show Cause was ultimately received by Respondent on August 12, 1997. In a letter to the DEA Office of Administrative Law Judges dated August 15, 1997, Respondent did not dispute that his license to practice medicine in the Commonwealth of Massachusetts was suspended. Respondent further stated, "[h]owever, I am soon to enter into a probationary agreement with [the Massachusetts Board of Medicine] that will allow me to practice medicine in a restricted and monitored fashion[.] I wonder if then at that time it would be possible for me to apply for some sort of DEA license with whatever restrictions [DEA] would deem appropriate, so that I may prescribe medications if and when I am allowed to continue practice?" Respondent did not request a hearing on the issues raised by the Order to Show Cause.

The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 16, 1997, Government counsel sent a letter to Respondent which advised him that he could either surrender his DEA Certificate of Registration, request a hearing, or waive his right to a hearing and submit a written statement for consideration regarding the proposed revocation of his registration. Respondent was further advised that if he surrendered his registration or DEA revoked it, he could reapply for a new DEA Certificate of Registration upon reinstatement of his state license, but that his DEA registration would not be automatically reinstated if he regains his state license.

Thereafter, on November 3, 1997, the Office of Administrative Law Judges

sent Respondent a letter advising him that if no request for a hearing was received by November 24, 1997, he would be deemed to have waived his right to a hearing. On December 8, 1997, Judge Bittner issued a Memorandum and Order stating that since no request for a hearing was received, Respondent was deemed to have waived his opportunity for a hearing pursuant to 21 CFR 1301.43(d). Consequently, after considering relevant material from the investigative file, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on November 9, 1994, the Commonwealth of Massachusetts, Board of Registration in Medicine issued an Order of Suspension of Respondent's license to practice medicine in the Commonwealth of Massachusetts. The suspension was based on charges related to Respondent's mental condition and dependence on alcohol and drugs; the substandard quality of medical care Respondent provided; Respondent's false statements on his Massachusetts license renewal application; and his violation of the Controlled Substances Act.

Respondent did not present any evidence that his Massachusetts medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Massachusetts. The Acting Deputy Administrator further finds that it is reasonable to infer that Respondent is also not authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the Commonwealth of Massachusetts. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BR2726365, previously

issued to David M. Rose, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 17, 1998.

Dated: July 10, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA#167R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 1998

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1998 aggregate production quotas.

SUMMARY: This notice proposes revised 1998 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections should be received on or before August 17, 1998.

ADDRESSES: Send comments or objections to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On November 21, 1997, a notice of established initial 1998 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (62 FR 62349). The notice proposing initial